



May 23, 2003

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: *Ex Parte* Notice

In the Matter of the Implementation of the Telecommunications Act of 1996, CC Docket No. 96-115.

In the Matter of Telecommunications Carrier's Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 99-273

Dear Ms. Dortch:

On Thursday, May 22, 2003, I met with Marcy Greene, Daniel Shiman and William Kehoe of the Wireline Competition Bureau. We discussed NTCA's positions in the above-proceedings. A summary of the discussion points was provided at the meeting and is attached.

In accordance with the Commission's rules, an original and two copies of this letter are being filed with the Secretary's Office. If you have any questions, please do not hesitate to contact Dan Mitchell at 703-351-2016.

Sincerely,

/s/ Dan Mitchell
Dan Mitchell
Senior Legal Counsel

cc: Marcy Greene
Daniel Shiman
William Kehoe

Attachment

Ex Parte
May 22, 2003

CC Dockets 96-115 and 99-273

1. The Commission has recognized that 4 cents per listing may not be enough to recover the costs of small and rural LECs for providing listings to directory publishers. *See SLI Order*, 14 FCC Rcd at 15607, ¶ 105.
2. The Association of Directory Publishers (ADP) has specifically stated that it “understands that certain small telecommunications carriers may have costs in excess of the four cent benchmark” and that “an exemption from the benchmark may be appropriate for rural telecommunications carriers” as defined in section 153(37). *Comments of CenturyTel and TDS in Support of NTCA Petition for Reconsideration*, p. 4, filed on January 11, 2000, (quoting a letter from Michael F. Flynn, Counsel for ADP, to Magalie Roman Salas, Secretary, FCC, pp. 2-3, filed on September 17, 1998).
3. NTCA has provided cost-based and market-based evidence, which demonstrates that a rate of 42 cents per listing would be reasonable for small carriers. *NTCA’s Petition for Reconsideration*, pp. 6-9, (November 4, 1999) and *NTCA’s Reply Comments*, pp. 2-5, (January 21, 2000).
4. NTCA’s proposed 42 cents rate represents a 16.67 percent increase over the rural telephone companies’ 36 cents per listing cost-based average to provided rural companies with a reasonable contribution to their common costs and overheads. *NTCA’s Reply Comments*, pp. 2-5 (January 21, 2000). NTCA’s proposed rate is consistent with the Commission’s 4 cents rate, which represents a 14.29 percent increase over the Bell operating companies’ 3.5 cents per listing cost-based average to provide the BOCs with a reasonable contribution to their common costs and overheads. *See SLI Order*, ¶¶ 92-95 and note 213.
5. NTCA’s request for a separate 42 cents rate is endorsed by over 1,000 small rural telephone companies represented by NTCA, the National Rural Telephone Association (NRTA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), CenturyTel, Inc., and TDS Telecommunications, Inc. In addition, the Yellow Pages Publishers Association (YPPA) supports NTCA’s petition. *See the comments filed by these parties on January 11, 2000.*
6. ADP has failed to provide cost evidence to rebut the cost-based rates provided by 28 rural telephone companies in this proceeding or demonstrate that a rural telephone company rate of 42 cents per listing is unreasonable. *ADP’s Comments in Opposition*, pp. 5-6, and *ADP’s Reply Comments*, pp 2-3.
7. When the Commission has a rule, such as its 4 cents presumptively reasonable directory listing rate for Bell operating companies, which has a significant economic impact on a substantial number of small entities, such as rural telephone companies, the Regulatory Flexibility Act (RFA) permits the FCC to adopt an alternative rule or rate to obtain its objective in a less burdensome way on small entities. The alternative 42 cents rate for rural telephone companies would be consistent with the RFA and would allow the Commission to achieve its goal of facilitating efficient competition in the directory publishing market, permit rural carriers to recover their costs for providing listings to publishers, and minimize, if not eliminate, the potential for litigation between small carriers and publishers over rates. *NTCA’s Reply Comments*, pp.4-5, and *Third Report and Order*, ¶¶ 23, 93-98, 102-105.